

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION**

UNITED STATES OF AMERICA

v.

Case No. 8:03-CR-77-T-30TBM

HATEM NAJI FARIZ

**REPLY TO GOVERNMENT'S RESPONSE TO MOTION TO PRESERVE
TESTIMONY BY WAY
OF FOREIGN DEPOSITION AND FOR PAYMENT OF EXPENSES**

Defendant, Hatem Naji Fariz, by and through undersigned counsel, hereby respectfully requests that the Court uphold its ruling on his Motion to Preserve Testimony by Way of Foreign Depositions and for Payment of Expenses. As grounds in support, Mr. Fariz states:

On February 9, 2005, during oral argument, the Court granted Mr. Fariz's Motion to Preserve Testimony by Way of Foreign Depositions and for Payment of Expenses with respect to 7 out of 8 proposed witnesses. The government requested leave to file a response to the motion, and did so on February 10, 2005.

With respect to the government's contentions regarding the unavailability of the proposed witnesses, the Court has recognized that the individuals are in fact unavailable, since they are foreign nationals beyond the subpoena power of the Court. Further, as residents of militarily occupied territory, their ability to travel abroad freely is highly circumscribed. However, if the Court's concerns in this regard are not met, Mr. Fariz is

prepared to supplement the record by way of affidavits that will show the unavailability of the proposed witnesses conclusively.¹

With respect to the issue of the materiality of the proposed witnesses' testimony, Mr. Fariz has provided written summaries and oral proffers made under questioning by the Court regarding this issue, and urges the Court to stand by its ruling. If the Court should require further information regarding the materiality of the proposed testimony, Mr. Fariz is prepared to address that issue if need be.

As for the government's concerns regarding the risk of perjury, the Eleventh Circuit, in a highly analogous case involving the deposition of an alleged drug dealer in Colombia, has held that such a concern, whether singly or in combination with other factors, is insufficient to deny the taking of a deposition. *United States v. Ramos*, 45 F.3d 1519, 1523-24 (11th Cir. 1995). Further, there has been no delay on the part of Mr. Fariz's request, which is timely under the orders of this Court. (Doc. 605.) In sum, the government's concerns are wholly inadequate to deny Mr. Fariz due process and his right to present a defense to the charges against him in the strongest manner possible.

WHEREFORE, the defendant, Hatem Naji Fariz, would respectfully request that the Court uphold its ruling on his Motion to Preserve Testimony By Way of Foreign Depositions and For Payment of Expenses.

¹As noted in Mr. Fariz's original motion, unavailability need not be established conclusively, but need only be probable. *United States v. Drogoul*, 1 F.3d 1546, 1553 (11th Cir. 1993).

Respectfully submitted,

R. FLETCHER PEACOCK
FEDERAL PUBLIC DEFENDER

/s/ Wadie E. Said

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Attorney for Defendant Fariz

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 11th day of February, 2005, a true and correct copy of the foregoing has been furnished by CM/ECF, to Walter Furr, Assistant United States Attorney; Terry Zitek, Assistant United States Attorney; Cherie L. Krigsman, Trial Attorney, U.S. Department of Justice; William Moffitt and Linda Moreno, counsel for Sami Amin Al-Arian; Bruce Howie, counsel for Ghassan Ballut; and to Stephen N. Bernstein, counsel for Sameeh Hammoudeh.

/s/ Wadie E. Said
Wadie E. Said
Assistant Federal Public Defender